IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10440 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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DEEPAK PINTU ALIAS PINTIYO PADMAJI RANDIVE

Versus

STATE OF GUJARAT

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Appearance:

MS JAYSHREE C BHATT for Petitioner No. 1

MR RM CHAUHAN, AGP for Respondents

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CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 28/08/2003

ORAL JUDGEMENT

1. By way of this Special Civil Application, the petitioner has challenged the order dated 04.2.2003 passed by the Police Commissioner, City of Surat, against him, in exercise of powers under Section 3(1) of the

Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as "PASA Act") declaring the petitioner to be a "dangerous person" within the meaning of the PASA Act, and directing the detention of the petitioner. In pursuance of the said impugned order in this petition, the petitioner is detained in jail since 04.2.2003.

2. In the grounds of detention, the detaining authority has relied upon two registered crimes against the petitioner. One registered on 27th of September, 2002 under Sections 323, 504, 506 (2) and read with Section 114 of the IPC, and second crime registered on 11.1.2003 under Sections 326, 354 and read with Section 114 of the IPC. In addition to this, the detaining authority has also relied upon the statements of witnesses, whose identity was concealed as per Sec. 9(2) of the PASA Act. The statements of the witnesses came to be recorded by proposing authority on 15.1.2003. Out of them, one witness narrates the incident of 5.1.2003 and other witness narrates the incident of 9.1.2003. In the incident of 5.1.2003, it is narrated by the witness that when he was doing his business at Maipur, the petitioner and his associates came there and asked for Rs.1,200/- as instalment to continue his business. The petitioner and his associates were lashed with weapons. When the witness accosted the petitioner and his associates, he was beaten, and on gathering of crowd, the petitioner as well as accompanying associates rushed towards the crowd with weapons, while the incident occurred on 9.1.2003 indicates that the witness who was called by the petitioner, and the petitioner demanded Rs.500/- from the witness. When the witness refused to give Rs.500/- to the petitioner, the witness was beaten and when he shouted, the crowd was gathered and the petitioner along with his associates rushed towards the crowd. From this material, Police Commissioner, Surat, detaining authority, came to the subjective satisfaction that the petitioner was a "dangerous person" and was required to be detained.

3. Learned Advocate Mrs. Jayshree C Bhatt for the petitioner and learned AGP Mr. R.M. Chauhan were heard at length.

4. Though various contentions raised on behalf of the petitioner, and controverted by the AGP, it appears that the matter can be dealt with and disposed of on the ground of delay in passing of the order. It is revealed from the report that two registered crimes which have been relied upon by the detaining authority were

registered on 27.9.2002 and 11.1.2003. The narrated incidents of the witnesses are of 5.1.2003 and 9.1.2003. However, the statements of the witnesses came to be recorded by the proposing authority only on 15.1.2003. The detaining authority verified the statements only on 20.1.2003. The detention order came to be passed on 4.2.2003. From the above, it is clear that though the first offence came to be registered on 27.9.2002 and latter incidents are of 5.1.2003 and 9.1.2003, the order of detention came to be passed only on 4.2.2003, vitiating the subjective satisfaction of the detaining authority by unexplained delay in passing the order. This view is supported by the decision of this Court in the case of THAKORE GIRISHJI @ GIDHAJI JENAJI vs. DISTRICT MAGISTRATE & ORS., reported in 2002 (1) GCD 338 and in the matter of ELESH NANDUBHAI PATEL vs. COMMISSIONER OF POLICE, AHMEDABAD CITY, reported in 1997 (1) GLH 381. The view is also supported and fortified by a decision of the Apex Court in the matter of PRADEEP NILKANTH vs. S. RAMAMURTHY, reported in AIR 1994 SC 656.

5. In the result, this Special Civil Application is allowed with no order as to costs. The order impugned in this Special Civil Application passed by the Police Commissioner, Surat, on 4.2.2003 under Section 3(1) of the PASA Act against the petitioner is quashed and set aside. Petitioner is directed to be set at liberty forthwith if he is not required to be detained in jail for any other purpose. Rule made absolute.

(J.R. Vora, J.)

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